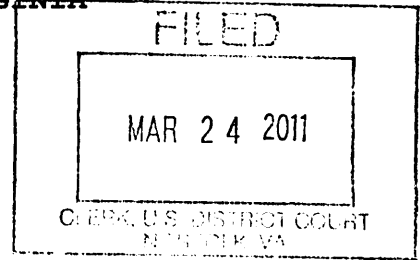


UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division



EDWARD E. SIMMS, #1182336,  
Petitioner,

v.

ACTION NO. 2:10cv432

HAROLD W. CLARKE,  
Director of the Virginia  
Department of Corrections,  
Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, has submitted a pro se petition, pursuant to 28 U.S.C. §2254, to redress alleged violations of his constitutional rights during his sentencing following convictions on April 21, 1987, in the Circuit Court for the City of Hampton for robbery, use of a firearm in the commission of robbery, possession of a sawed-off shotgun, abduction, grand larceny, and breaking and entering. Petitioner was sentenced to serve three life sentences plus sixty years in the Virginia penal system.

The petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States

District Court for the Eastern District of Virginia for report and recommendation. The Magistrate Judge's Report and Recommendation was filed February 11, 2011. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired.

The Court does hereby accept the findings and recommendations set forth in the Report and Recommendation filed February 11, 2011, and it is therefore ORDERED that Respondent's motion to dismiss (ECF No. 5) is GRANTED, and the petition for writ of habeas corpus (ECF No. 1) is DISMISSED WITHOUT PREJUDICE to Petitioner's right to present his claims after obtaining an order from the United States Court of Appeals for the Fourth Circuit authorizing this Court to consider his successive petition as required by 28 U.S.C. § 2244.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to

Rule 22(b) of the Federal Rules of Appellate Procedure. See  
Miller-El v. Cockrell, 123 S.Ct. 1029, 1039 (2003).

The Clerk shall mail a copy of this Final Order to  
Petitioner and to counsel of record for Respondent.

\_\_\_\_\_  
/s/  
Rebecca Beach Smith  
United States District Judge

*RBS*

\_\_\_\_\_  
UNITED STATES DISTRICT JUDGE

Norfolk, Virginia  
March 24, 2011